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Author(s): Sharath Nambiar

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Responsibility to Protect or Licence to Plunder?

Sharath Nambiar

Responsibility to Protect (R2P) is a relatively new international norm that permits state intervention in cases of gross humanitarian violations. While R2P was designed to protect civilians from harm, this paper argues that it is an uneven trade-off for deconstructing state sovereignty. By assessing the moral and practical ramifications of R2P, one can find the prioritisation of vague liberal ethics over institutionalised legal frameworks comes at a grave cost to efficient responses to conflict. Subjective interpretations of morality increase the selectivity of the doctrine which is further corrupted by the political, financial, and militaristic concerns of the intervening countries. This paper also explores the internal legitimacy of states and finds that R2P obfuscates a state's moral duty. R2P provides the West the ability to self-legitimise and control the narrative while failing to address the root causes of conflict. Therefore, it is crucial to explore alternatives to R2P that could better address the challenges of humanitarian intervention.

Our modern conception of the state is predicated on our engagement with and the study of war. War, as we understand it to be, was predominantly defined by armed violence until recent years. This violence was regimented and justified under the banners of god, territory, and/or human greed. By justifying war, the modern state was able to legitimise its use of force and enforce epistemological and moral hierarchies upon its enemies (Tilly, 1985). With time these even gave way for justifying military interventions in third-party conflicts where those victimised shared an ethnicity, religion, or other immutable factor to those intervening (Heuser, 2022). Although post the Cold War there has been a trend to justify war

not on state needs or divine instruction, but rather on humanitarian grounds based on the inherent value of human dignity, the global political system has been moving towards a new universal set of moral principles grounded in individual human rights (Jemirade, 2020), (Jahn, 2021). This contested the realist conception of state sovereignty prevalent after World War II due to the increasing number of conflicts and atrocities being committed and the impact of the holocaust still prevalent in discussion surrounding law, morality, and just action.

During this wave, a new political norm has emerged known as the Responsibility to Protect (hereby known as R2P). Its intentions were simply

to provide the international community with legitimacy in superseding state sovereignty to protect human rights and prevent the four mass atrocity crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing. R2P allowed for use of force, giving rise to humanitarian interventions to combat the rising number of such atrocities globally. The main issue R2P posed to the international world order was an introduction of morality into political decisions. This article shall engage with a few of the larger implications of this new justification including the obvious infringement of sovereignty, the lack of state consent, the question of norm vs law, and both the subjective nature of and effects of its implementation. This article shall limit its analysis to Jus Ad Bellum, and shall also focus its attention on the collective action pillar of R2P rather than its preventative legs.

Morality, Selectivity, and Legitimacy

As introduced above, the first and main implication of a humanitarian justification of war is its prioritisation of individual rights over state stability and self-determination. It strives to use morality as a basis for deciding which wars are just and unjust which can allow for irregular applications and unfair treatment of those materially oppressed. Although before discussing the pitfalls of subjective morality, it would be beneficial to understand the key pillars of R2P to effectively engage with the norm. Acting as a response to the horrors

in the former Yugoslavia and Rwanda, R2P is not just a justification for military conflict, but its first pillar enshrines an international responsibility for every country to protect its own population from the four mass atrocity crimes. A failure to protect one's own citizens calls for the second pillar to ask the international community to assist and encourage meeting the above responsibility. Finally, if a state conclusively fails to meet its obligations, R2P allows for appropriate collective action to respond to the crisis

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at hand (Bellamy, 2012). This action often manifests itself as a military intervention sanctioned by the international community.

Limiting the R2P norm to the four mass atrocity crimes allows for states with greater global influence (i.e. the Great Powers) to both define and act upon their own constructed moral codes. Key among the moral goals of the West is the goal of global democratisation and liberalisation (Chandler, 2004). The liberal peace thesis as originally conceptualised by Kant promotes an international moral world predicated on

the increasing democratic consciousness of the contemporary world (Kant, 1795). By applying this thesis, agents with the most common humanity must be tasked with leading this moral exercise. These agents happen to be functional liberal democracies, thus giving power and agency to the West to dictate which humanitarian crises amount to mass atrocities. By consolidating power in the hands of the few, this opens up avenues for selectivity in application of these important classifications. As witnessed by the largely non-existent levels of international cooperation and action in response to the Syrian crisis, and in stark contrast, the quick turnaround with the Libyan crisis, this can result in a lack of consistency in the application of the R2P doctrine. The decision to intervene in another state is multifaceted, thus, multiple factors must be considered when dissecting a country's readiness or reluctance when it comes to taking action. Thus, it must be noted that the quicker response in Libya was supported by a confluence of multiple political agendas, i.e., France's intention to be more proactive within the EU, Tony Blair's sudden interest in regional affairs, and the Obama administration beginning its global reach (Howorth, 2013). This lack of consistency can therefore lead to fragmented responses which squander the aims of the R2P which was meant to

stand as a guiding norm for international assistance. Furthermore, due to this apparent selectivity there arises a double standard, one where many acts of violence go unnoticed, such as those seen in Turkey, Chechnya, Sri Lanka, Myanmar and more (Chinkin and Kaldor, 2017; CFR, n.d.).

This selectivity is predicated not just on a mere lack of international consensus, but also on existing power structures and their limitations (Deller, 2011). With the Security Council (SC) being the key arbiter in deciding what does and does not constitute an atrocity, this entangles personal state objectives that mar its main moral objective. The P5 nations (1) have a monopoly over power and thus act not morally, but rather based on legal limitations, political timelines, and practical ability. In the case of Syria, they received no formal assistance from the SC arguably due to its ties to Russia and China, and because it had a reasonably organised national military. Even with over 400,000 lives lost in the region, it did not receive the adequate intervention and assistance required to help alleviate its sociopolitical tensions (Howorth, 2013). This selectivity is also evidenced by the response to the Gaza strip, where even while multiple draft resolutions were written to incentivise action in the region, each one was vetoed by the

1: The P5 Nations are the USA, Russia, UK, China, and France. They hold permanent seats on the Security Council, which is one of the principal organs of the United Nations. It is tasked with ensuring international peace and security and is the only body with the authority to issue binding resolutions on member states.

and replacing the initial assumption of the origin of legitimacy of the state from citizen's consent with its ability to protect human rights, this flips the above argument in favour of the concept of intervention. This is the prominent view within the international community (Tesón, 2001). Although considering that the state's conception is logically prior to exercising its morality, its duty to its citizens is greater than its duty to protecting liberal values (regardless of it being domestic or international). This duty is therefore shirked when large portions of state resources and access to the international overton window is spent to service their secondary duty. This further substantiates the moral failings of the liberal peace theory and its glorification of democratic states as the peaceful ideal.

The (il)legality of R2P

Putting aside questions of morality and legitimacy, there exists a discussion of legality regarding the implementation of R2P. R2P is a political norm that has garnered popular support within western countries and has been gaining traction as an enforceable doctrine. However, seeing as it is not tied to any international treaties, there exists no requirement of compliance and no repercussions for a lack thereof. It exists solely in the political and rhetorical spheres of global politics (Chesterman, 2011). Due to this lack of effective regulation, acts of war carried either unilaterally or collectively can use this norm as a shield against being held responsible for the consequences of

their interventions. NATO's unsanctioned intervention in Kosovo was seen simply as "illegal but legitimate" by the Independent International Commission on Kosovo (2000). Regardless of the intervention failing in its mission to prevent the ethnic cleansing of the region's minorities, by using its moral aims as the basis for its actions, NATO faced no consequences for its use of violence in the region (Chinkin and Kaldor, 2017). Allowing for a mere norm to achieve substantial diffusion and stand akin to international law, creates a precedent for norms to advance beyond their initial non-coercive intention. The 2005 World Summit Outcome Document outlined the R2P in significant detail and established the norm into an international legal and political custom (United Nations General Assembly, 2005).

With further legitimisation comes more misrepresentation. As with the conflict between Russia and Georgia over South Ossetia, it is clear that Russia abused the principle of R2P, but was able to fly under its banner and disproportionately aggravate the conflict under the guise of 'humanitarianism' (Badescu and Weiss, 2010). The US and UK's involvement in Iraq speaks to a similar flouting of international law to ex post facto pursue this emerging doctrine by using pre-emptive force that was disproportionate to the humanitarian abuse in the region (Badescu and Weiss, 2010). While these are not perfect applications of the humanitarian justification, these are instances of collateral damage that is

United States, to presumably protect its political and ideological ally, Israel (Eskiduman, 2022). Thus, the lack of R2P's implementation in Gaza is symptomatic of its selectivity problem. Through the arbitrary and irregular implementation of its three pillars, R2P has become a paragon for neo-colonialist power.

Another justification used by academics to substantiate the inherent losses of war is a cost benefit analysis — if the harm of intervening is less than the benefits, then it is a worthy pursuit (Jahn, 2021). This is both short-sighted and unrealistic. Supporters of western imperialism and R2P would be quick to view Libya as a success and a legitimate infringement of their sovereignty (Bellamy, 2014b). This does not account for the aftereffects of political turmoil, lack of adequate infrastructure, and the introduction of western corporations that sought after its natural resources. Chimni puts forward evidence showing how colonialist explorers used the same justification of humanitarian benefits to exploit and take control of entire civilisations. This trend extends to globalisation where the 'cost-benefit analysis' is predicated on the intervening country's benefit rather than that of the intervened. This further victimises the infringed country (Chimni, 2021).

An additional implication of humanitarian intervention is the lack of internal moral legitimacy in the intervening state (Buchanan, 2018). Accepting that every state exists to protect and serve the

interests of its citizens, its actions must extend solely to support their needs. Their legitimacy is then based on their citizen's consent to the state. By non-consensually intervening, the intervening party is not just infringing upon another's sovereignty but also its own legitimacy. Considering the source of their legitimacy, intervening countries have a higher moral duty to their citizens over those external. Thus, ethically, they must prove the intervention to have a higher benefit to their citizens to be legitimate in their interests which can only happen if they prioritise their own needs over those of the intervened. This leads to a clash of interests — internal

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legitimacy requires benefitting itself, while external legitimacy is dependent on an altruistic use of force. Seeing as this is hard to reconcile, there is a flouting of these internal state obligations to achieve natural justice beyond the scope of their jurisdiction. Most countries that engage in R2P actively employ the language of humanitarianism to obfuscate their possible selfish motives (Kardas, 2003). This implies a lack of adherence to absolute morality, but rather subjective interpretations of liberal morality. Instead, by buying into the liberal thesis

a result of a poorly regulated doctrine. Moralistic imperatives are supplanted by personal state interests, following the realpolitik nature of the post-World War II era. Due to a lack of institutionalisation of the doctrine, the norm has limited ability to ensure compliance due to its vague and politicised nature. By allowing subjective interpretations of “moral duty”, R2P provides laissez faire for states to act without accountability and corrective action (Illingworth, 2022). Non-western states are then left to not just deal with the aftermath of the interventions of global powers, but also their inability to engage actively with the doctrine due to their lack of international legitimacy. Ziegler (2014) uses this to contest the widespread diffusion of the norm; arguing instead that most of the global South and East are left unable to internalise the doctrine at all. Thus, this imperfect duty is left without providing effective and consistent redress for countries committing such atrocities. Thereby, R2P only contributes to the problem rather than solving it.

R2P: A neo-imperialist weapon

Assuming that the doctrine was legitimate in its goal, there still exist issues with its implementation through subjective assessment of authority and the neoimperialistic tendencies of the West, beginning with who should be the ones protecting the global world order (Deller, 2011). The 2005 World Summit placed the onus on the SC to follow a set of six criteria to assess the need for humanitarian intervention: “just

cause, right intention, right authority, last resort, proportional means and reasonable prospects” (ICISS, 2001, 32). While the former three requirements are relatively objective, the latter three are highly subjective and are dependent on the SC to place their metrics on proportionality and reasonableness. Through its ad hoc system of legitimising interventions, there exists a wide margin of subjective applicability (Chandler, 2004). This not only further muddles the intentions of the R2P, but also allows for greater disagreement and stagnation in responding to mass atrocities. This thus opens the United Nations to being unnecessarily undermined by global powers aiming to act on their moral duties. Of these, the P5 nations have the increased ability to abuse their power and reinforce a false cosmopolitan framework of responsibility. Their sovereignty remains the only ones protected as they have a monopoly on both power and legitimacy. As such, the rest of the international community is increasingly vulnerable, which is likely to profoundly alter how non-Western states interact with international institutions (Chandler, 2004).

Considering the already tense relationships between Western and non-Western states in the status quo, further proliferation of using R2P is likely to lead to an increase in western neoimperialism. This is evident in how even now, western counterinsurgency and proxy wars are not labelled as mass atrocities whereas independent conflicts are quickly

labelled and discussed as 'failed states' (Mamdani, 2010, 57). With the western consolidation of power, these nations can construct global narratives that benefit themselves — gaining impunity while actively villainising others (Mamdani, 2010, 59). This creates an unequal global regime placing western conceptions of morality, legality, and reality as the stage upon which international diplomacy can engage. This is likely to normalise western governance over Africa, Asia, and Latin America.

Bellamy (2014a) argues that there exists no link between R2P and Western imperialism, stating the many instances where the West refused to help Africa out of concern for the region. Although there is evidence to prove the West's constraint regarding explicit intervention, there is an argument to be made about western globalisation and its effect on the prevalence of war. The west can effectively and remotely engage in aerial missiles and employ technologically advanced modes of warfare, forcing all engagement with the west to remain asymmetric (Eaton, 2002, 58). Thus, with not just having majority control over the P5, SC, and UN, but also controlling a large share of global markets as active consumers, the influence of the west is palpable across the globe. R2P cannot be viewed within a vacuum, but rather must be entertained within global contexts and power imbalances. Delegitimising state sovereignty opens many developing and post-colonial countries to excess scrutiny and dismantles decades of work

to maintain and protect their respective principles of self-determination. This further weakens weak states, leaving them vulnerable to pervasive influences, both internal and external — likely resulting in more conflict.

Conclusion

While the intentions behind legitimising humanitarian war may be to cater to the oppressed and enshrine individual human rights, this essay finds it to be an uneven trade-off for deconstructing state sovereignty. By assessing the moral and practical ramifications of R2P, one can find the prioritisation of vague liberal ethics over institutionalised legal frameworks, comes at a grave cost to efficient responses to conflict. Subjective interpretations of morality increase the selectivity of the doctrine which is further corrupted by the individual political, financial, and militaristic concerns of the intervening countries. This essay has even delved into the internal legitimacy of states and have found R2P to be an obfuscation of a state's moral duty. Furthermore, if the only stopgaps for immoral actions include accountability and the threat of intervention, those countries that are invulnerable to accountability have increased agency; thereby furthering a global power imbalance. This questions the branding of "illegal but legitimate", because legitimacy must be grounded in law and policy, lest prejudiced morals take precedence in deciding whether to push the metaphorical big red button.

Confusion over what can and cannot fly under the banner of R2P gets discussed often only after the act of intervention has taken place. States are then able to use R2P to gain a free pass and walk away from the consequences of their actions.

Alternatives to R2P already exist, such as UN peacekeeping forces, economic sanctions, and other international norms such as the protection of civilians in armed conflict. If R2P was able to

equitably reduce state security as the focus for international politics for all states, it could be better implemented and supported by both the West and non-West. Predicating morality over self-determination gives power not to those who are the most moral, but rather to those who have the most power over the metrics of morality. Thus, R2P provides the West with the ability to self-legitimise and control the reins of power and access to the legal use of force.

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